IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 216 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AIA ENGINEERING PVT. LTD.
Versus
BHARAT DAND AND OTHERS

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Appearance :
Mr Mihir Joshi, Senior Counsel assisted by Mr.Devang Nanavati for Nanavati & Nanavati for Appellant.
Mr RM Chhaya for Respondent No.1.
Mr Abhay Jain with Mr YJ Trivedi for Respondent No.2.
Mr Jatin Y Trivedi for Respondent No.2.
Mr Pranav G Desai for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 09/02/2007

ORAL JUDGMENT

By filing this Appeal from Order under Section 43 of Civil Procedure Code, the appellant, who is the original plaintiff of Civil Suit

No.3317/2001, has challenged the judgment and order passed by learned Judge of City Civil Court, Ahmedabad below notice of motion Exh.5/6 in the aforesaid suit, by which the learned trial Judge has dismissed the interim injunction application, while granting certain directions to defendant no.2.

2) The appellant is a private limited company. It has filed the aforesaid suit alleging that the defendants have illegally accessed the technology, which is referred to in the pleadings and are using the trade secrets of the plaintiff for their own gain. The details of such technology and trade secrets are described in the plaint. It is the case of the plaintiff that the plaintiff is a private limited company engaged in the business of manufacturing of high chromium wear resistance castings including grinding media balls and liners for tube mills, inserted rolls, related castings and airport ring assembly for vertical mills having application in power generation, mining and cement manufacturing industries. As per the averments in paragraph 2 of the interim injunction application, initially, the technology for manufacturing the aforesaid products was received by the plaintiff from Magotteaux S.A., (a corporation organized and existing under the laws of Belgium) under the Technical and Financial Collaboration Agreement dated 28/6/1991. The said technology was subsequently refined, modified and developed by the plaintiff jointly with Magotteaux S.A. during their collaboration. The said technology constitutes the trade secrets of (i) Design parts for balls mills, vertical mills, kilns and crushers; (ii) chemical formulae; (iii) methoding of casting manufacture; (iv) manufacturing process (v) heat treatment technology (vi) knowhow to adapt this technology to deliver end products capable of satisfying the exact working condition and application; (vii) process knowhow for optimization work of equipments where the wear part are fitted; (viii) developing special equipment for

manufacturing the products. It is also the case of the plaintiff that Magotteaux S.A. was one of the world's leading manufacturer of special steel products and grinding media and is engaged throughout the world in the business of research, development, manufacturing and sales of products and is a specialist in the business of studying and solving grinding problems by using special techniques. The aforesaid trade secrets were made available to the plaintiff by Magotteaux and/or developed by the plaintiff under the above-referred agreement subject to strict terms of confidentiality and on payment of substantial amount of costs by the plaintiff. It was further the case of the plaintiff that the information, which constitutes the trade secrets, referred to above, is not generally or otherwise available to any person.

3) It was also the case of the plaintiff that under the terms of the collaboration the plaintiff has paid an amount of Rs.1883.99 lacs as royalty to Magotteaux for technology in relation to the aforesaid products, and additional amount of Rs.171.96 lacs to Slegten S.A., Belgium for additional technology available through Magotteaux and an amount of Rs.50.81 lacs to a company known as South Western Corporation of USA for obtaining technology in respect of airport ring assembly. Accordingly, the plaintiff has also invested a sum of Rs.550 lacs in research and development in relation to the aforesaid products till date.

4) In paragraph 5 of the injunction application it is averred that the defendants have illegally accessed the technology referred to above and are using the trade secrets of the plaintiff for their own gain. It is averred by the plaintiff that so far as high chromium grinding media is concerned, Magotteaux and thereafter the plaintiff in conjunction with Magotteaux have, over a considerable period of time developed special

technology which would reduce the wear rate of such media and achieve a consistency on account of its chemical formulation and micro-structure by applying the aforesaid secrets to guarantee a particular wear rate. The characteristic of a reduced wear rate has immense potential to reduce the cost for the purchaser. The plaintiff by adopting the said trade secrets has been able to reduce the wear rate of high chromium grinding media for special application of grinding zinc ore from an industrial average of about 900 gms./tonne to about 780 gms/tonne, which has not been achieved by any other manufacturer. The aforesaid special application of grinding zinc ore is a specific requirement of a company known as Hindustan Zinc Limited. It is the case of the plaintiff that the plaintiff was taken aback to learn that recently the defendant no.2 had offered grinding media of an identical wear rate as that of the plaintiff to the aforesaid company. A copy of the contract received by the defendant no.2 with the company is annexed with the list of exhibits. It is further the case of the plaintiff that the said defendant has never manufactured grinding media of the said specification/quality and does not have and could not have technology for manufacturing the same on its own and, therefore, the said defendant was illegally using the trade secrets and technology of the plaintiff for the purpose of its business.

5) In paragraph 8 of the injunction application it is averred that the defendants no.1 and 3, who are the ex-employees of the plaintiff are under an express and implied obligation to keep the trade secrets made available or becoming available to them in the course of their employment with the plaintiff confidential, however, the defendant no.1 has clearly committed a breach thereof and the plaintiff has learnt that the said trade secrets have been diverted by defendants no.1 and 3 to defendant no.2. Regarding the other product, i.e., Duocast rollers, it is the case of the plaintiff that the said product has been specially designed

and developed by Magotteaux and the plaintiff by innovative technology, where for the first time carbide inserts with very high hardness were embedded in soft ductile iron core and on account of special chemical formulae the bonding would be perfect and heat treatment response for both alloys would be highly favourable. The name “Duocast” was specifically coined on account of the use of two alloys in the rolls being part of the innovative technology by Magotteaux and the plaintiff, and in fact the said name is registered and is of the ownership of Magotteaux. After the collaboration between the plaintiff and the said company came to an end, use of the word by the plaintiff is restricted as per the terms and conditions of settlement. As per the case of the plaintiff, the plaintiff has recently learned that since September 2000, defendant no.2 has been offering the said Duocast rolls, which are identical to that of plaintiff. The defendant has not started commercial manufacturing or supply the same in the absence of any confirmed orders. It is also the case of the plaintiff that the plaintiff is offering the services of segregating grinding media balls and for that purpose it has developed a technology in collaboration with Magotteaux for equipment known as Ball Sorting Machine. The said machine is an important tool for the plaintiff to promote sales of its high chromium grinding media to its customers. The plaintiff had also annexed with a list of exhibits, the design developed by the plaintiff in connection with the said product. It is averred by the plaintiff that the defendant no.2 has got an identical ball sorting machine fabricated by defendant no.3 using the drawing and technology of the plaintiff and is offering the same to its customers. It is also the case of the plaintiff that its trade secrets are diverted to defendant no.2 by defendants no.1 and 3, who were employees of the plaintiff. It is also the case of the plaintiff that the defendant no.1, who was engaged as In-charge Maintenance with the plaintiff was relieved from the services of the plaintiff with effect from 21/9/1998 and he has now been engaged

by defendant no.2 to extract confidential information including technology, specifications, drawing etc. in relation to the plaintiff's products and make the same available to the defendant no.2. Defendant no.1 was visiting the factory of the plaintiff even after termination of his service and that he was also in the habit of sitting at the snack center just outside the factory gate and interacting with some of his ex-colleagues. On this and such other grounds, the aforesaid suit has been filed for declaration and injunction. By filing aforesaid suit, the plaintiff has prayed to declare that defendant nos.1 and 3 have no right to use or disclose information of secret processes of manufacturing and any other information of high degree of confidentiality and trade secrets to second defendant or any other person. It is also prayed that the defendants be restrained by a permanent injunction from disclosing or using the aforesaid information in any manner. The plaintiff has also filed an interim injunction application with a prayer to restrain the defendants from manufacturing, offering for sale or supplying grinding media for zinc ore grinding application of a wear rate of 780 gms/tonne or lower; Duocast rollers (inserted rolls used in vertical grinding mills); airport ring assembly; ball sorting machine and associated services.

6) The aforesaid application is resisted by the defendants. The defendant no.1 filed its reply at Exh.35 to the interim injunction application inter alia contending that the suit has been filed with a view to harass him because he has left the employment of the plaintiff company and started his own business. He has denied the allegations made against him in the plaint. It is his case that he was not in charge of the department but working at low level and there were two superiors above him, who were taking care of all the policy matters, designs and other important things, and he was required to do the work of repairing and maintenance only. He has denied the allegation that he has diverted

the trade secrets to defendant no.2.

7) The defendant no.3 has also filed his reply at Exh.37, by contending that the plaintiff company is not manufacturing and selling machines known as Ball Sorting Machine and that the principle of sorting product and mechanism for sorting the same is used in various industries since last more than 100 years and nobody can claim any monopoly or exclusive right unless the same is patented under the Patent Act or Design Act. Said defendant has also denied allegations about passing trade secret. It is his case that he was in a lower cadre where he was to look after the repairing of machines only and he was not in charge of the technology of the company, no technology was given to him by the plaintiff company nor he was aware about any chemical formulation or microstructure for manufacturing the said product. He has denied the allegation about diverting the trade secrets regarding any of the products manufactured by the plaintiff company.

8) The defendant no.2 company, which was the main contesting defendant has filed its affidavit-in-reply at Exh.24. It is the case of the defendant no.2 that it is an establishment incorporated in the year 1983 and having turn over of Rs.2566.71 lacs in the year ended 31st March, 2001 and have established a very good name, reputation and goodwill in the market. It is the case of defendant no.2 that it is manufacturing High Chrome Grinding Media Ball since 1994 and is supplying the same to various customers in India and also exports the same outside India. It is also the case of the said defendant no.2 that the plaintiff is their competitor since the said product is being purchased by some customers through press tenders and therefore, the plaintiff is well aware of the manufacturing and marketing of the said product by it since 1994 and, recently, since the plaintiff's tenders are not accepted against the said

defendant's offer, the plaintiff has filed the present suit just to disturb the marketing position and supply as per the tender to its customers. It is also the case of the said defendant that the plaintiff is neither the owner nor the proprietor of any patent, design, trade mark or copyright of High Chrome Grinding Media Ball and the suit, therefore, is filed completely based upon wrong statement to misdirect the Court. It is also the case of said defendant that there is no cause of action available to the plaintiff for filing such a suit and the Court at Ahmedabad have also no territorial jurisdiction to decide the same. It is also the case of the defendant that the plaintiff is not entitled to claim any exclusive right regarding the technology when the technology is not new or invented by the plaintiff. It is further contended that Magotteaux is not the only company manufacturing the disputed product but there are various other companies manufacturing the said product since number of years and the said company has not acquired an exclusive right of their alleged secret or specialized method under the Patent Act or under the Designs Act. It is also the case of said defendant that said defendant is not bound by any agreement entered into by the plaintiff with any other party. It is also the case of the said defendant that there is no secrecy or any inventiveness in the process of manufacturing the alleged product since the process is well known and used in the world since long. It is also the case of the said defendant that defendant no.2 is supplying the products to his customers as per their specifications and chemical formulae since 1994 and that the said product is supplied to Hindustan Zinc Ltd., since 1998. It is further submitted by said defendant that Hindustan Zinc Ltd., has published its requirement with details and specifications in press tender and after receipt of various tenders from various suppliers, Hindustan Zinc Ltd., evaluates the technical competency of the suppliers and thereafter, they accepted the offer of defendant no.2 being the lowest. Regarding ball sorting machine, it is the say of defendant no.2

that it is sold to it by defendant no.3, which is used for the purpose of segregating the used and rejected balls and, hence, it has nothing to do with the manufacturing or processing of the alleged product. It is also the say of defendant no.2 that it is not manufacturing Duocast rolls and it is not interested in manufacturing the said product and a letter was circulated by it only with a view to survey the demand of such product in the market, which does not create any ground or cause of action for breach of any right of the said Magotteaux. It is categorically stated by the defendant no.2 that it is not interested in manufacturing or supplying the said product. So far as drawings of the other machines produced by the plaintiff are concerned, it is averred by defendant no.2 in its reply that such drawings are not of any unique character and similar machines are manufactured by various manufacturists in the world since long. It is also the case of the said defendant that it is manufacturing the alleged product at Jaipur and marketing the said product to Hindustan Zinc Ltd., at Udaipur and, therefore, the trial Court has no jurisdiction to decide the suit. It is also the case of the defendant no.2 that suit is filed with a mala fide intention in order to disturb the supply of the product as per the contract entered by it with Hindustan Zinc Ltd. On these and other grounds, the injunction application of the plaintiff was resisted by defendant no.2. In its reply, the said defendant has specifically mentioned about all the concerned products by contending that it cannot be said that the plaintiff has obtained any special knowledge or knowhow of any such product.

9) Initially, the learned trial Judge had granted ad-interim order below Exh.5 and 6 and subsequently, original plaintiff gave consent for modification of the order to enable defendant no.2 to deliver the goods to Hindustan Zinc Ltd, as the goods were required to be delivered by defendant no.2 in the month of July, 2001. The trial Judge by his order

dated 27/7/2001 modified the earlier order and defendant no.2 was permitted to deliver the goods to Hindustan Zinc Ltd., as per the schedule shown in document at exh.3/8 for the month of July 2001. Rest of the order of ad-interim injunction was thereafter extended till 14/8/2001. The aforesaid order of modification was passed below an application submitted by defendant no.2 at Exh.21 and 23 for the purpose of fulfilling its contractual commitments with Hindustan Zinc Ltd.

10) The learned trial Judge, thereafter, after hearing both the sides ultimately by its order dated 31/1/2002 dismissed the said interim injunction application, on condition that the defendant no.2 shall disclose on oath, on record of the suit, all his business transactions with reference to the product of High Chrome Grinding Media Balls as objected to by the plaintiff, i.e., wherever defendant no.2 has supplied the said product with wear rate of les than 800 GM/MT and file an undertaking before the trial Court to the effect that he shall pay the damages, if any, suffered by the plaintiff in the event of success by the plaintiff in the present case for the alleged misappropriation of the trade secret by it. The trial Court also restrained defendant no.2 from utilizing the literature and materials similar to that of the plaintiff with reference to the “Duocast Rolls”. The trial Court has also directed defendant nos.1 and 3 to file an undertaking to the same effect that he shall pay damage, if any, suffered by the plaintiff in the event of success in present case for the alleged misappropriation of the trade secret by him. Accordingly, the trial Court has vacated the interim order granted earlier.

11) The aforesaid order of the trial Court is impugned in present Appeal from Order at the instance of original plaintiff.

12) Learned Senior Counsel Mr.Mihir Joshi, who is appearing for appellant – original plaintiff vehemently submitted that considering the facts and circumstances of the case as well as considering the prima facie evidence on record, injunction as prayed for was required to be granted as defendant no.2 has tried to obtain the trade secrets of the plaintiff in connection with the product in question. It is submitted by Mr.Mihir Joshi that so far as High Chromium Grinding Media Ball for zinc ore is concerned, the plaintiff has acquired technical knowhow and special skill in connection with wear rate of 780 gms/tonne. It is submitted by M.Joshi that it is true that there may be many traders in the market so far as High Chromium Grinding Media Ball is concerned, but he submitted that normally all other manufacturers are not able to achieve wear rate less than 800 gms/tonne but the plaintiff has acquired expertise in connection with wear rate by achieving wear rate at 775 gms/tonne. It is submitted by him that defendant no.2 has offered the said product at the wear rate of 760 gms/tonne and, therefore, it can be presumed that only by taking advantage of the trade secret of the plaintiff, that they have achieved the said wear rate. He submitted that if the wear rate is less it is more beneficial to the purchaser so far as purchase cost of the product is concerned. It is submitted that except the plaintiff, no other manufacturer is able to achieve less than 775 gms/tonne and it is only that plaintiff who has expertise in the same, for which he has relied upon the agreement entered into between the plaintiff and Magotteaux. It is submitted by Mr.Joshi that defendants no.1 and 3, who were employees of the plaintiff company, after having left the job have disclosed the said trade secret to defendant no.2, otherwise, it is impossible for defendant no.2 to achieve wear rate at 760 gms/tonne, for which it took part in the tender of Hindustan Zinc Ltd. It is also argued by Mr.Joshi that the plaintiff had also carried out ball test with Hindustan Zinc Ltd., to show that they are able to achieve wear rate

less than 800 gms/tonne. It is submitted by Mr.Joshi that such expertise and technical knowhow is achieved by Magotteaux and the said company has entered into an agreement with the plaintiff for manufacturing the said grinding media ball at the wear rate of 775 gms/tonne and according to Mr.Joshi the plaintiff has got such expertise and knowhow from Magotteaux and for that the plaintiff has paid heavy royalty to Magotteaux. It is submitted by Mr.Joshi that if injunction is not granted the plaintiff will suffer immense loss as their trade secret and technical knowhow will be available to all other manufacturers also. Mr.Joshi submitted that defendant no.2 is not in a position to disclose his source of information, as to how they have been able to achieve wear rate of 760 gms/tonne, as it is impossible for any company other than the plaintiff to achieve wear rate of less than 800 gms/tonne. Mr.Joshi further submitted that the information is diverted by defendants no.1 and 3 and in the absence of any particulars given by defendant no.2 as to how they are able to achieve the said wear rate, injunction ought to have been granted. As the persons who were in service of the company were not required to divert any trade secrets and if it is diverted to any third party, such third party can also be injuncted. Mr.Joshi further submitted that the plaintiff has not based its case regarding violation of any statutory rights under the Patents Act or the Designs Act or Copyright Act but the cause of action has occurred under the common law and under the Law of Torts, to prevent defendants no.1 and 3 to divert trade secrets to defendant no.2. Regarding the other two products, i.e., Duocast Rolls and Ball Sorting Machine, Mr.Joshi argued about technical knowhow and trade expertise of the plaintiff. Regarding trade secrets being diverted by defendant nos.1 and 3 to defendant no.2, Mr.Joshi also submitted that so far as design about ball sorting machine is concerned, it is the special skill of the plaintiff and it is a sort of service device. Mr.Joshi also submitted that so far as Duocast Rolls is concerned, when

defendant himself has admitted that it is not going to do business of this product, injunction was at least required to be granted regarding the said product. Mr.Joshi has therefore submitted that under the common law the defendant no.2 was required to be prevented from using the trade secret of plaintiff and the defendants no.1 and 3 are required to be injuncted from passing on any trade secret to defendant no.3.

13) Mr.Joshi has relied upon various decisions of the English Courts in connection with diverting the confidential information by an employee to third party.

14) Mr.Joshi has relied upon the decision reported in **1989 (1) Fleet Street Reports 135**, in **Johnson & Bloy (Holdings) Limited and another Vs. Wolstenholme Rink Plc and another**, wherein it is observed as under :

> "The question is not whether there was a possibility of effective competition until trial, the question is whether secret or confidential information of the plaintiffs, which they are entitled to protect, will be lost without the aid of injunction. I think therefore that in that respect the judge misdirected himself and that the matter is therefore at large before this Court.
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> I think therefore in the circumstances the plaintiffs have an arguable case and raise a serious issue to be tried that the composition of the gold ink is a trade secret in respect of the combination of the materials."

15) Mr.Joshi has also relied upon decision of the English Court reported in **1986 (1) AIIER 617**, in **Faccenda Chicken Ltd., Vs. Fowler**

and Others, wherein the Court has held that where the parties are, or have been linked by a contract of employment, the obligation of the employee are to be determined by the contract between him and his employer and in absence of any express term the obligation of the employee in respect of the use and disclosure of information are the subject of implied contract. Mr.Joshi submitted that in view of such implied contract, defendant nos.1 and 3 are required to be injuncted from passing on information regarding trade secret.

16) Mr.Joshi has also relied upon the decision of the English Court reported in **1967 RPC 375** in the case of **Terrain Limited Vs. Builders Supply Company (Hayes) Limited and others**, wherein it is held that a person, who has obtained information is confident is not allowed to use it as spring board for activities detrimental to the person made the confidential communication.

17) Mr.Joshi has also relied upon the decision of the Delhi High Court in the case of **John Richard Vs. Chemical Process Equipments Pvt. Ltd.**, reported in **AIR 1987 DELHI 372** and submitted that in such cases, injunction can be granted.

18) Mr.Joshi has also relied upon the decision of the Queen's Bench Division in the case of **Robb Vs. Green**, wherein the Court of Appeal has held that it was an implied term of contract of service that the defendant would observe good faith towards his master during the existence of the confidential relation between them and that the defendant's conduct was a breach of that contract in respect of which the plaintiff was entitled to damages and an injunction.

19) Mr.Joshi has also relied on various other decisions on this point

and submitted that in such cases injunction should be granted.

20) On the other hand, Mr.Jain, learned advocate appearing along with Mr.Y.J.Trivedi for defendant no.2 submitted that there is nothing on record to show that the plaintiff has acquired any technical knowhow or special knowledge regarding any of the products. It is submitted by him that defendant no.2 is already in the market since long in connection with High Chromium Grinding Media Balls having wear rate of 760 gms/tonne, Mr.Jain submitted that defendant no.2 has already submitted its tender for the said product having wear rate 760 gms/tonne in the year 2001 and, ultimately, in view of the modification of injunction it has completed the said contractual obligation with Hindustan Zinc Ltd., and has supplied the said product also. (though, of course, Mr.Joshi has submitted it is true that defendant no.2 has supplied the goods having wear rate of 760 gms/tonne but that was after filing of the suit and was with the consent of the plaintiff). Regarding Duocast Rolls, it is submitted by Mr.Jain that his client is not going to do business of Duocast Rolls by using the name Duocast and his client may do the business of the product in some other name. Regarding Ball Sorting Machine, it is submitted by him that there is nothing to show that plaintiff has got any technical knowhow or expertise in the said product. He submitted that after the contract with Magotteaux is over, the plaintiff cannot be said to be the inventor nor can it be said that the plaintiff itself has any technical knowledge except the fact that it has got such knowledge through Magotteaux. He, therefore, submitted that no injunction can be granted, especially, when the plaintiff has not patented any product under the Patent Act or under any other Act and, therefore, no statutory protection is available to the plaintiff. He submitted that even under the common law, this is not a case in which injunction is required to be granted. He submitted that if any injunction is granted the

defendant no.2 will suffer immensely as it will not be able to do its business till the suit is decided. Mr.Jain further submitted that the trial Court has adequately protected the interest of the plaintiff by imposing various conditions while rejecting the injunction application. He, therefore, submitted that this Appeal from Order against a discretionary order of the trial Court is required to be rejected. More so, when the trial Court has considered all the relevant facts and material on record.

21) Mr.Jain has relied upon the decision of the Supreme Court in the case of **P.R.Sinha and Others Vs. Inder Krishan Raina and Others** reported in **(1996) 1 SCC 681**, to substantiate his say that the High Court should not pass interim order, the nature of which is to grant a relief which can be granted only at the final disposal of a writ petition.

22) Mr.Jain has also relied upon the decision of the Delhi High Court in the case of **Prem Singh Vs. M/s. Ceeam Auto Industries** reported in **AIR 1990 DELHI 233**, wherein the Delhi High Court has held that when the plaintiff himself is not the originator of the design and was shown to have adopted or imitated trade mark/copy right of third party he would not be entitled to any relief from the Court.

23) Mr.Jain has also relied upon the Division Bench of this Court in the case of **Lalbhai Dalpatbhai and Company Vs. Chittaranjan Chandulal Pandya** reported in **1965 (0) GLHEL 206720**, wherein in connection with right of employer regarding asking for injunction against servants regarding breach of negative stipulations contained in the contract of personal service, it is held that injunction cannot be granted by Court in the matter of stipulation in contract that employee should not serve anywhere.

24) I have heard both the learned counsels in details. I have also gone through the voluminous material produced on record and the decisions cited by both the sides.

25) It is required to be noted that so far as High Chromium Grinding Media Ball is concerned, there are various traders in the market, but according to Mr.Joshi all of them are having wear rate of more than 800 gms/tonne and wear rate of less than 760 gms/tonne is achieved by the plaintiff because of special knowledge. Mr.Joshi has argued that regarding all the products in dispute, the plaintiff has got technical knowhow as well as expertise, which is achieved by the plaintiff. In this connection, it is required to be noted that it is not the plaintiff, who is the originator or innovator of any of the aforesaid products and under the agreement with Magotteaux the plaintiff is manufacturing the aforesaid products. It may be true that so far as wear rate of less than 760 gms/tonne for High Chromium Grinding Media Ball is concerned, in the past, nobody might have offered the said wear rate but documentary evidence clearly suggest that the plaintiff by agreement with Magotteaux obtained the right for manufacturing High Chromium Grinding Media Ball with wear rate of less than 760 gms/tonne. It is required to be noted that there is nothing on record to suggest that defendants no.1 and 3, who were ex-employees of the plaintiff, have diverted any technical secret to defendant no.2. It is not possible for me to accept the say of Mr.Joshi that in such cases, even if direct evidence may not be available, the Court is required to infer the same especially when defendant no.2 is not in a position to disclose its source of knowledge for achieving wear rate of less than 760 gms/tonne for which it has submitted tender to Hindustan Zinc Ltd. During the course of arguments, Mr.Jain has submitted that his client has achieved the wear rate by trial and error method. It is required to be noted that there is no direct evidence

available on record; ultimately, this question is required to be decided in trial by appreciating the evidence on record, at this stage, even Mr.Joshi is also not in a position to say that there is any direct evidence or sufficient evidence available on record for coming to the conclusion that defendant no.2 has achieved wear rate of less than 760 gms/tonne only by getting trade secret of the plaintiff, through either defendant no.1 or defendant no.3. At this stage, it is not possible for this Court to give any finding only on the basis of surmises or conjectures unless full fledged data is available at the conclusion of trial. Apart from that when it is not in dispute that the plaintiff is not the inventor or originator of the same, but it has achieved the said wear rate by way of an agreement with Magotteaux and Magotteaux has not made any complaint by taking out any proceeding against defendant no.2 in this behalf. It has come on record that even agreement entered into with Magotteaux has come to an end. Apart from that fact, when there is no prima facie satisfactory evidence on record, the order of the trial Court whereby defendant no.2 is permitted to continue its business is not required to be interfered with in this Appeal from Order. It is no doubt true that under the common law, a servant can be prevented from diverting the trade secret and even in a given case, a third party can also be restrained from acting in any manner on the basis of receiving such trade secret but there has to be some prima facie evidence available on record, which is not there in the present case. With the sketchy material available on record in this behalf, on surmises and conjectures, it would not be proper to injunct the defendant no.2 from manufacturing or selling the product High Chromium Grinding Media Ball having wear rate of less than 760 gms/tonne. As to in which manner, defendant no.2 is able to achieve the said wear rate is a matter of trial. It is also required to be noted that even by interim order, defendant no.2 was permitted to fulfill its commitment with Hindustan Zinc Ltd., and it is an admitted fact that, in the past, it

has already supplied high chromium grinding media with wear rate of less than 760 gms/tonne to Hindustan Zinc Ltd. Therefore, it goes to show that defendant no.2 had offered aforesaid wear rate to Hindustan Zinc Ltd., for which it entered into an agreement at the time when the suit was filed. Considering the said aspect of the matter, the trial Court's order is not required to be interfered with, especially when it is an admitted fact that the plaintiff itself is not the originator or innovator and when there is no protection available to the plaintiff under any statutory provisions under the Patents Act or any other Act. Even if, ultimately, the plaintiff is able to prove that the defendants have committed any wrong, the plaintiff can very well be compensated by granting decree for damages. The trial Court has adequately protected the plaintiff in this behalf while giving appropriate directions to the defendants. Similar is the position, so far as rest of the products are concerned. The trial Court has given appropriate reasonings while deciding Exh.5 application, which, in my view, is not required to be disturbed by this Court in an appeal filed under Section 43 of the Civil Procedure Code, against a discretionary order of the trial Court.

26) I have considered the case laws but, as stated earlier, considering the reasoning of the trial Court and considering the factual aspect discussed earlier, in my view, at this stage, when there is no satisfactory evidence that the plaintiff itself is the originator and inventor in connection with the aforesaid products and simply because through Magotteaux the plaintiff has been able to get wear rate of less than 760 gms/tonne, it is not possible to come to a conclusion that it is only through defendant nos.1 and 3 that the defendant no.2 has got the trade secret or information. At such an interlocutory stage, defendant no.2 is not required to point out the source of information or knowledge by which it is able to get the knowledge about wear rate of 760 gms/tonne.

Considering the fact that there is no statutory protection available to the plaintiff and when the plaintiff is not able to satisfy the Court that defendants no.1 and 3 have directly or indirectly passed on any such information to defendant no.2, order of the trial Court refusing injunction while imposing various conditions on the defendants, in my view, is not required to be interfered with. It cannot be said that the trial Court has committed any error of law or that it has exercised its discretion in an arbitrary manner, which would justify interference with the order passed by the trial Court in this Appeal from Order.

27) Considering the aforesaid aspect of the matter, I do not find any substance in this Appeal from Order. Accordingly, this Appeal from Order is dismissed. Interim relief granted earlier stands vacated with no order as to costs.

28) At the request of Mr.Joshi, interim relief granted earlier by this Court is ordered to be continued till 26/2/2007.

(P.B.Majmudar, J.)

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